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IN THE

Supreme Court of the United States

October Term, 1955

No. 396

ALFRED HOLMES, OLIVER W. HOLMES and DR. H. M. HOLMES,

Petitioners,

vs.

CITY OF ATLANTA, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above-entitled cause on June 17, 1955.

Opinions Below

The opinion, findings of fact and conclusions of law of the District Court (R. 56-62) are reported at 124 F. Supp. 290. The opinion of the Court of Appeals (R. 69-72) is reported at 223 F. 2d 93.

Jurisdiction

The judgment of the Court of Appeals affirming the judgment of the lower court was entered on June 17, 1955. Jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1251(1).

Question Presented

Whether a judgment which enjoins the exclusion of Negroes from publicly owned and operated facilities, but which empowers state officials to impose segregation in the use and enjoyment of such facilities, accords to petitioners the redress to which they are entitled under the Fourteenth Amendment.

Statement Of The Case

The relevant facts in this case are not in dispute. On July 19, 1951, petitioners sought to use a public golf course maintained by the City of Atlanta for the use and enjoyment of the general public but were refused permission to play thereon by the defendants solely because of their race and color (R. 8). Petitioners sought permission of the Park Commissioners to use these facilities, but such permission was refused. This suit followed.

On June 26, 1953, petitioners filed a complaint in the district court (R. 1-15) seeking a declaratory judgment and injunction enjoining respondents "from making any distinction on account of race or color in providing opportunities, advantages and facilities for playing the game of golf upon the public golf courses that are now provided, owned, maintained and operated by the City of Atlanta, or that may be established and constructed by the City of Atlanta hereafter, for the benefit and use of the citizens of the City

of Atlanta, Georgia." On August 12, 1953, a motion to dismiss and a motion for a more definite statement was filed by respondents (R. 17-25), and was denied on September 5, 1953 (R. 25-28). The answer was filed on September 15, 1953 (R. 28-31). On July 6, 1954, a hearing was held in the court below (R. 36-55), and on July 8, 1954, the district court entered its findings of fact, conclusions of law and judgment (R. 56-62). The judgment (R. 61-62) was as follows:

> The refusing to allow plaintiffs and others similarly situated because they are negroes, to make use, on a substantially equal basis with white citizens of municipal facilities for playing golf is to practice a forbidden discrimination. It is therefore,
>
> Considered, Ordered and Adjudged that the defendants, and each of them, their agents, employees and servants be, and they hereby are restrained and enjoined from refusing to allow plaintiffs and other negroes similarly situated, because they are negroes, to make use, on a substantially equal basis with white citizens of the municipal facilities for playing golf. The effect of this judgment will for a reasonable time and until the further order of this Court, be postponed in order that the defendants may be afforded a reasonable opportunity to promptly prepare and put into effect regulations for the use of the municipal golf facilities which, while preserving segregation, will be in full and fair accord with its principles. This principle is that the admissibility of laws separating the races in the enjoyment of privileges afforded by the State rest wholly upon the equality of the privileges which the laws give to the separated groups within the State. In applying this principle, that equality of treatment of white and colored citizens must be afforded which will secure to both, complete and full recognition, that,

> under the Constitution and laws, there are not two classes of citizens, a first and second, but one class with all of equal rank in respect of their rights and privileges to use and enjoy facilities provided at public expense for public use.

On August 6, 1954, petitioners filed notice of appeal and urged in their brief and argument in the Court of Appeals that the judgment below was in error in permitting the state to admit Negroes to the golf course but operate such facilities on a segregated basis. It was urged that all racial differentiations in the use and enjoyment of these facilities were barred by the Fourteenth Amendment. The Court of Appeals affirmed the judgment on the apparent ground that the judgment entered was consistent with the relief asked for in the complaint, and that the errors urged were at variance with the judgment entered. That judgment is here for review.

Specification Of Errors To Be Urged

The Court of Appeals erred:

1. In holding that this case was properly decided on the grounds that the district court had granted the petitioners all the relief which they requested.

2. In sustaining the judgment of the court below in which the Fourteenth Amendment is construed as permitting the enforcement of regulations requiring racial distinctions in the use and enjoyment of golf facilities owned and operated by the City of Atlanta.

3. In sustaining the judgment of a district court which applies the "separate but equal" doctrine of *Plessy* v. *Ferguson* to the instant case.

Reasons For Allowance Of The Writ

1. The decision of the Court of Appeals is in apparent conflict with the decisions of this Court in the *School Segregation Cases* (*Brown* v. *Board of Education*, 347 U. S. 483; *Bolling* v. *Sharpe*, 347 U. S. 497) with respect to the scope and reach of the Fourteenth Amendment. Under the instant decision, the Court of Appeals condones regulations which require racial segregation in the use and enjoyment of the public parks of the City of Atlanta. The necessary premise upon which this decision rests is that the "separate but equal" doctrine is an appropriate constitutional yardstick in the field of public recreation, and that repudiation of that doctrine in the *School Segregation Cases* applies only to the field of public education.

It is true, of course, that prior to decision by this Court in the *School Segregation Cases* that lower federal courts and state courts had regarded the "separate but equal" doctrine as the basic test to determine the constitutionality of state imposed racial segregation in almost all areas of state activity. The decisions of this Court, however, do not support such all-inclusive application of "separate but equal". The doctrine was approved by this Court in *Plessy* v. *Ferguson*, 163 U. S. 537—a case involving transportation. It was rejected in *Buchanan* v. *Warley*, 245 U. S. 68, as inappropriate to the field of housing. It was repudiated in the field of public education in the *School Segregation Cases*. Indeed, a reading of that opinion indicates that this Court, on reexamination of its own decisions in the field of education, does not regard any of those decisions as constituting adoption or approval by this Court of the "separate but equal" doctrine. In *Brown* v. *Board of Education*, *supra*, the Court said at page 491:

> In the first cases in this Court construing the Fourteenth Amendment, decided shortly after its adoption, the Court interpreted it as proscribing all

> state-imposed discriminations against the Negro race. The doctrine of "separate but equal" did not make its appearance in this Court until 1896 in the case of *Plessy* v. *Ferguson, supra,* involving not education but transportation. American courts have since labored with the doctrine for over half a century. In this Court, there have been six cases involving the "separate but equal" doctrine in the field of public education. In *Cumming* v. *County Board of Education,* 175 U. S. 528 . . . and *Gong Lum* v. *Rice,* 275 U. S. 78 . . . the validity of the doctrine itself was not challenged. In more recent cases, all on the graduate school level, inequality was found in that specific benefits enjoyed by white students were denied to Negro students of the same educational qualifications. *Missouri ex rel. Gaines* v. *Canada,* 305 U. S. 337 . . . ; *Sipuel* v. *Oklahoma,* 332 U. S. 631 . . . ; *Sweatt* v. *Painter,* 339 U. S. 629 . . . ; *McLaurin* v. *Oklahoma State Regents,* 339 U. S. 637 . . . . In none of these cases was it necessary to reexamine the doctrine to grant relief to the Negro plaintiff. And in *Sweatt* v. *Painter* . . . the Court expressly reserved decision on the question whether Plessy v. Ferguson should be held inapplicable to public education.

Thus, with the repudiation of the "separate but equal" doctrine in the field of public education in the *School Segregation Cases,* there are no decisions of the Supreme Court other than those involving transportation in which the doctrine has been applied by this Court.

Moreover, the doctrine has never been approved by this Court in the field of public recreation. There are only two relevant decisions involving public recreation decided by this Court and both of those decisions are indications that this Court regards its decisions in public education with

respect to "equal protection of the laws" and "due process of law" as applicable in the field of public recreation.

Rice v. *Arnold,* judg. vacated and remanded, 340 U. S. 848, judg. aff'd, 54 So. 2d 114 (1951), cert. denied, 342 U. S. 946, raised the question of the right of Negroes to use city owned and operated golf links in Miami, Fla., without being subjected to segregation. This Court, granted certiorari, vacated the judgment below and remanded the cause for reconsideration in the light of *Sweatt* v. *Painter,* 339 U. S. 629, and *McLaurin* v. *Oklahoma State Regents,* 339 U. S. 637. On remand, the Florida Supreme Court reaffirmed its prior judgment and stated that in any event petitioner had misconceived his remedy; that if he sought to challenge the reasonableness of the court's judgment, the proper procedure would have been for him to file a bill for declaratory judgment. It was on this state procedural ground that this Court based its refusal to grant the petition for writ of certiorari when the case again reached the Supreme Court. Justices Black and Douglas were of the opinion that the petition should be granted.

Sweeney v. *Louisville,* 102 F. Supp. 525 (W. D. Ky. 1951), aff'd *sub nom. Muir* v. *Louisville Park Theatrical Assn.,* 202 F. 2d 275 (CA 6th 1953), judg. vacated and remanded, 347 U. S. 971. In the *Muir* case, a private theatrical organization holding outdoor theatrical shows in a public amphitheater in Louisville, Kentucky was held both by the district court and the Court of Appeals to be outside the reach of the Fourteenth Amendment when question was raised concerning its practice of racial discrimination. This Court granted the petition for writ of certiorari, vacated the judgment and remanded the cause for "consideration in the light of the Segregation Cases . . . and conditions that now prevail."

These two cases clearly demonstrate that this Court regards its decisions in the field of public education as applicable to the field of public recreation.

Indeed, whatever the present status of the "separate but equal" doctrine, it seems clear that public recreation is far closer to public education than it is to intrastate transportation. Thus, logic would dictate that decisions in public education govern dispositions of similar questions in public recreation. Moreover, in *Bolling* v. *Sharpe, supra,* this Court made clear the fact that racial classifications would be scrutinized and tested with "particular care", and would not be sustained unless "reasonably related to a proper governmental objective." There it said at page 499:

> Classifications based solely upon race must be scrutinized with particular care, since they are contrary to our traditions and hence constitutionally suspect. As long ago as 1896, this Court declared the principle "that the Constitution of the United States, in its present form, forbids, so far as civil and political rights are concerned, discrimination by the General Government, or by the States, against any citizen because of his race." And in Buchanan v. Warley, 245 U. S. . . . the Court held that a statute which limited the right of a property owner to convey his property to a person of another race was, an unreasonable discrimination, a denial of due process of law.
>
> Although the Court has not assumed to define "liberty" with any great precision, that term is not confined to mere freedom from bodily restraint. Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective . . .

Under this test it is manifest that regulations by the City of Atlanta in the use and enjoyment of public golf courses based upon race and color cannot be justified. For if segregation is unreasonable as to public schools where attendance is compulsory, certainly it is unreasonable as to golf courses, the use of which is entirely voluntary. The doctrine of the *School Segregation Cases,* we submit, is applicable here, and it was error for the court below not to apply that doctrine in disposing of this case.

Further, the court below affirms the judgment of the district court on the grounds that the petitioners obtained all the relief they asked for. That this is a misreading of petitioners' pleadings, we point out *infra,* but more importantly, the issue here must be whether the state has the power to subject the use of its parks to regulations which require racial segregation in their use and enjoyment. Under the decisions of this Court, we submit, it has no such power. Since the decision of the Court of Appeals is at variance with those decisions, it cannot be sustained. For this reason, we submit, this petition for a writ of certiorari should be granted.

2. There is conflict among the Courts of Appeals on this question, and that conflict should be resolved by this Court.

In *Williams* v. *Kansas City,* 205 F. 2d 47 (CA 8th 1952), the Court of Appeals affirmed the judgment of the district court which had struck down racial segregation in the use of a city owned and operated swimming pool as violative of the Fourteenth Amendment. The Court of Appeals relied upon *McLaurin* v. *Oklahoma State Regents, supra,* as the basis for its affirmation of the lower court's judgment. While the court did not hold that the "separate but equal" doctrine was no longer of validity, it felt bound to follow the same approach which this Court had followed in

the *McLaurin* case. This Court denied a petition for writ of certiorari, 346 U. S. 826.

In *Dawson* v. *Mayor*, 220 F. 2d 386 (CA 4th 1955), the Court of Appeals struck down segregation in public parks and bathhouses owned and operated by the City of Baltimore and the State of Maryland as violative of the Fourteenth Amendment. The court there relied upon the *McLaurin* case, *supra; Brown* v. *Board of Education, supra; Bolling* v. *Sharpe, supra,* and *Henderson* v. *United States*, 339 U. S. 816, as setting forth the applicable law which should be applied in that case. There it said that it is obvious "that segregation cannot be justified as a means to preserve the public peace merely because the tangible facilities furnished to one race are equal to those furnished to the other." There the court felt bound to apply to public recreation the same rationale which this Court had used in approaching the question of segregation in graduate schools and dining cars and public elementary and secondary schools. That case is now pending in this Court on appeal.

Here a contrary position is taken. The Court of Appeals has sustained the authority of the state to impose racial distinctions in the use of its public parks and has held, by necessary implication that the "separate but equal" doctrine is a valid constitutional yardstick with respect to the use and enjoyment of public recreational facilities.

The Fourth and Eighth Circuits are clearly of the view that the "separate but equal" doctrine had been weakened or repudiated by more recent decisions of this Court and have refused to apply that doctrine in the field of public recreation. In fact, the Fourth Circuit is clearly of the opinion, as stated *supra*, that the "separate but equal" doctrine is of no validity and cannot be applied with respect to the regulation of public recreational facilities. On the other hand, the Fifth Circuit, as evidenced by the opinion in the instant case, necessarily takes the view that the

"separate but equal" doctrine still has validity and can be applied in the field of public recreation.

We submit that the rationale of this Court's decisions in the field of public education—*McLaurin* v. *Oklahoma State Regents, supra; Brown* v. *Board of Education, supra,* and *Bolling* v. *Sharpe, supra,*—are guides to decisions in any area where question is raised concerning the constitutionality of state racial restrictions and distinctions. We submit that the approach to decisions by the Fourth and Eighth Circuits, on one hand, and by the Fifth Circuit, on the other, cannot be reconciled. It is important and necessary in the public interest that this Court make clear which approach is proper. It is respectfully submitted, therefore, that this petition be granted to resolve this conflict and clarify the question which these three cases raise.

3. The decision of the Court of Appeals in the instant case is contrary to Rule 8f. and 54c. of the Federal Rules of Civil Procedure.

Rule 8f. provides as follows:

> All pleadings shall be so construed as to do substantial justice.

Rule 54c. provides:

> A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

The decision of the Court of Appeals is a narrow and technical reading of the pleadings in this case. Indeed, it is a misreading of the complaint because nowhere do peti-

tioners request a judgment which would permit their use of the golf facilities in Atlanta to be subject to rules and regulations requiring racial segregation. In their complaint, petitioners prayed (see R. 14, par. 6) for an injunction restraining and enjoining the respondents "from making any distinction on account of race or color in providing opportunities, advantages and facilities for playing the game of golf upon the public golf courses that are now provided, owned, maintained and operated by the City of Atlanta. ..." This, we submit, is unquestionably a prayer for relief which encompasses a judgment barring racial segregation. Rule 8f. of the Federal Rules of Civil Procedure, we submit, required the court to so read these pleadings, providing they were entitled to relief which barred imposition of any racial distinctons whatever.

When the instant action was begun, petitioners and all other Negroes were completely excluded from public golf courses in Atlanta. In their complaint, petitioners sought the right to use the golf courses on the same basis as all other citizens. The pleadings here are not, as the Court of Appeals seeks to imply, subject to the construction that petitioners are merely asking to use the golf courses subject to racial segregation pursuant to the "separate but equal" doctrine. Rather, the complaint seeks to have the state officials enjoined from making any distinctions whatsoever in the use and enjoyment of the golf course. Moreover, if the state is empowered to impose segregation in the use of the golf courses, the fact that petitioners prayed that it not be imposed would be of little moment insofar as their entitlement to relief is concerned. On the other hand, if the state is not empowered to impose segregation in the use of these facilities (as we contend), then a decision which requires that the public golf facilities in question be opened to Negroes would necessarily require that these facilities be made available, subject only to the same rules and regulations applicable to all other persons.

We submit, therefore, that the court below was required to grant to petitioners all the relief to which they were entitled irrespective of whether such relief was prayed for in the pleadings. This has been the construction of Rule 54c. *Blazer* v. *Black*, 196 F. 2d 139 (CA 10th 1952); *Carter Oil Co.* v. *McCasland*, 190 F. 2d 887 (CA 10th 1951), cert. denied 342 U. S. 870, rehearing denied 342 U. S. 899; *Gardner* v. *Mid-Continent Grain Co.*, 168 F. 2d 819 (CA 8th 1948); *Roth* v. *Fabrikant Bros., Inc.*, 175 F. 2d 665 (CA 2d 1949); *Cohen* v. *Randall*, 137 F. 2d 441 (CA 2d 1943), cert. denied 320 U. S. 796; *Del Balso* v. *Carozza*, 136 F. 2d 280 (C. A. D. C. 1943); *Hawkins* v. *Frick-Reid Supply* Corp., 154 F. 2d 88 (CA 5th 1946).

The decision here is at variance with both these universally accepted and well-recognized rules of federal practice and this Court should grant this petition for writ of certiorari to bring this decision in line with applicable rules governing the conduct of federal courts.

Conclusion

WHEREFORE, for the reasons hereinabove stated, this petition for writ of certiorari should be granted, and the judgment of the court below should be reversed and remanded without argument based on the decision of this Court in the School Segregation Cases.

Respectfully submitted,

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MEMORANDUM IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

We do not agree that the petition correctly states the question presented. The court below said "of the clear opinion, that the judgment in terms accorded plaintiffs all the relief that they asked for, that the specifications, in complaining as error that the court refused and failed to adjudge and order, in accordance with their prayers, are in contradiction of the precise terms of the judgment, and are, therefore, without substance, we affirm the judgment, * * * *". *Alfred Holmes, et al v. The City of Atlanta, et al, 223 Fed. 2nd, 93, 95.*

STATEMENT OF THE CASE

We disagree with the statement of the case contained in the last paragraph on page 4 of the petition. The court below clearly stated the issues that were brought to the attention of that court in the following language:

"Appealing from the judgment, plaintiffs are here assigning two specifications of error:

'The trial court erred:

'1. In refusing to rule that appellees were required by the Fourteenth Amendment of the Constitution of the United States to admit appellants and other Negroes similarly situated to public golf facilities subject only to the same rules, regulations and conditions applicable to all other persons.

'2. In failing to enjoin appellees from refusing to admit appellants and other Negroes similarly situated, without more, to the Bobby Jones Golf Course and all other public golf course facilities subject only to the same rules, regulations and conditions applicable to all other persons." *Alfred Holmes, et al v. The City of Atlanta, et al, 223 Fed. 2nd, 93, 95.*

The petition fails to state any ground for the allowance of the writ which are set out in Rule 19 of the new "Revised Rules" of the Supreme Court, which were adopted April 12, 1954. The only thing that the court below decided was that the judgment of the District

Court in terms accorded plaintiffs all the relief they had asked for.

The decisions cited by counsel for the petitioners are not in conflict with the decisions below.

CONCLUSION

WHEREFORE, for the reasons hereinabove stated, it is submitted that this petition for writ of certiorari should not be granted.

Respectfully submitted,

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